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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 PUGET SOUNDKEEPER ALLIANCE, ) Case No. C18-1745 RSM  
10 )  
11 Plaintiff, ) CONSENT DECREE  
12 v. )  
13 )  
14 CITY OF ANACORTES, )  
Defendant. )  
\_\_\_\_\_ )

15  
16  
17 **I. STIPULATIONS**

18 WHEREAS, Puget Soundkeeper Alliance (“Soundkeeper”) filed this citizen suit on  
19 December 5, 2018, alleging violations of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1251-  
20 1387, relating to the City of Anacortes’s (the “City’s”) implementation of its National Pollutant  
21 Discharge Elimination System (NPDES) Phase II Municipal Stormwater Permit (“the Permit”).  
22 In its complaint, Soundkeeper seeks declaratory and injunctive relief, civil penalties, and  
23 attorney’s fees and costs. The City denies the allegations in plaintiff’s Complaint.  
24

25 WHEREAS, the parties agree that settlement of these matters is in the best interest of the  
26 parties and the public, and that entry of this Consent Decree is the most appropriate means of  
27 resolving this action.  
28

29 CONSENT DECREE - 1  
Case No. 2:18-CV-01745-RSM

Smith & Lowney, p.l.l.c.  
2317 East John Street  
Seattle, Washington 98112  
(206) 860-2883

1 WHEREAS, the parties stipulate to the entry of this Consent Decree without trial,  
2 adjudication, or admission of any issues of fact or law regarding Soundkeeper's claims or  
3 allegations set forth in its complaint and sixty-day notice dated September 26, 2018.

4 Dated: December \_\_, 2019.

5 CITY OF ANACORTES

6 PUGET SOUNDKEEPER ALLIANCE

7  
8 By: \_\_\_\_\_

By: \_\_\_\_\_

9 Title: \_\_\_\_\_

Title: \_\_\_\_\_

10  
11  
12 **II. ORDER AND DECREE**

13 THIS MATTER came before the Court upon the Parties' Joint Motion for Entry of  
14 Consent Decree and the foregoing Stipulations of the parties. Having considered the  
15 Stipulations and the promises set forth below, the Court hereby ORDERS, ADJUDGES, and  
16 DECREES as follows:  
17

18 1. For purposes of this Decree, this Court has jurisdiction over the parties and  
19 subject matter of this action.

20 2. Each signatory for the parties certifies for that party that he or she is authorized  
21 to enter into the agreements set forth below.  
22

23 3. This Consent Decree applies to and binds the parties and their successors and  
24 assigns.

25 4. This Consent Decree is a full and complete settlement of the claims and  
26 allegations in the Complaint and all other claims known and unknown existing as of the date of  
27 entry of this Consent Decree that could be asserted under the CWA, 33 U.S.C. §§ 1251-1387,  
28

1 concerning the City's compliance or non-compliance with the Permit, including any activities or  
2 conduct performed for the purpose of complying with the Permit. These claims are released and  
3 dismissed with prejudice. Enforcement of this Consent Decree is Soundkeeper's exclusive  
4 remedy for any violation of its terms.

5           5.       This Consent Decree is a settlement of disputed facts and law. It is not an  
6 admission or adjudication regarding any allegations by Soundkeeper in this case or any fact or  
7 conclusion of law related to those allegations, nor evidence of wrongdoing on the part of the  
8 City.  
9

10           6.       Prior to executing this Consent Decree, the City performed the following actions  
11 as part of its efforts to resolve this litigation:  
12

13               a.       Without admitting any violation of the Permit, the City substantially  
14 revised and supplemented the content of its annual Stormwater Management Program Plan  
15 ("SWMP Plan") to include more detail regarding actions the City would take to implement the  
16 Permit in 2019. The City published its *2019 Stormwater Management Program Plan* in April  
17 2019.  
18

19               b.       Without admitting any violation of the Permit, on July 22, 2019, the City  
20 adopted Ordinance No. 3040, which contains updates to the City's Development Regulations.  
21 The portions of Ordinance No. 3040 that were revised as part of the settlement of this matter are  
22 highlighted and attached to this Consent Decree as Exhibit "A." The portions of future code  
23 revisions the City will make as part the settlement of this matter are attached to this Consent  
24 Decree as Exhibit "B."  
25

26           7.       Within sixty (60) days of entry of this Consent Decree, the City will prepare the  
27 summary report described in Condition S5.C.4.f.ii of the Permit (as issued on August 1, 2012,  
28  
29

1 modified on January 16, 2014, and expiring July 31, 2018) regarding the results of the LID code  
2 review and revision process, which will include, at a minimum, the list of participants (job title,  
3 brief job description, and department represented), the codes, rules, standards and other  
4 enforceable documents reviewed, and the revisions made to those documents which incorporate  
5 and require LID principles and LID BMPs. The summary report will be organized as required  
6 by Condition S5.C.4.f.ii as follows: (a) measures to minimize impervious surfaces; (b) measures  
7 to minimize loss of native vegetation; and (c) other measures to minimize stormwater runoff.  
8 Within five (5) days of completion of this summary report, the City will provide the report to  
9 Soundkeeper and will submit the report to the Washington State Department of Ecology.  
10

11  
12 8. In lieu of a payment of penalty, the City will perform as follows in exchange for  
13 the consideration provided by Soundkeeper in releasing its claims as specified herein and entering  
14 into this Consent Decree:

15 a. For a period of three (3) years following entry of this Consent Decree, the  
16 City will hold annual training sessions conducted by the Department of Ecology for staff  
17 persons conducting the review of stormwater site plans for proposed development and  
18 construction inspections under S5.C.6 of the Permit.  
19

20 b. Within six (6) months of entry of this Consent Decree, the City will  
21 organize and put on a presentation for students at Anacortes High School on stormwater  
22 pollution and prevention. The City will put on this presentation annually for the term of the  
23 Consent Decree.  
24

25 c. Within thirty (30) days of entry of this Consent Decree, the City will  
26 partner with the Skagit Conservation District to develop a new stormwater pollution prevention  
27 program for Anacortes elementary schools. This program will consist of seven (7) presentations  
28

1 to school children grades 2 to 6 at the Anacortes elementary schools. The subject matter of the  
2 presentations will focus on stormwater education, including understanding watersheds,  
3 discussions of sources of water pollution, the difference between point source and non-point  
4 source pollution, and how to mitigate pollution in stormwater. These seven (7) presentations  
5 will all be completed no later than two years from the date of entry of this Consent Decree.  
6

7 d. For a period of three (3) years following entry of this Consent Decree, the  
8 City will buy: (1) a full-page advertisement twice per year in the *Anacortes American Weekly*  
9 regarding the City's spill hotline and procedures and requirements for reporting and responding  
10 to spills; and (2) a column advertisement in every issue of *A-town is Our Town* regarding the  
11 City's spill hotline and procedures and requirements for reporting and responding to spills, and a  
12 full-page advertisement or story twice per year on Illicit Discharge Detection and Elimination.  
13

14 e. Within eighteen months from the date of entry of the Decree, the City  
15 will complete the City Hall Parking Lot LID Retrofit Projects, as described in Exhibit "C"  
16 attached to this Decree and will complete the Q Avenue Parking Lot LID Demonstration  
17 Project, as described in Exhibit "D" attached to this Decree. The two LID Projects referenced  
18 as Exhibits "C" and "D" in this paragraph shall include a durable sign stating: "This project was  
19 completed in coordination with Puget Soundkeeper Alliance."  
20  
21

22 9. For three (3) years following entry of this Decree, once each year, the City will  
23 email Soundkeeper the total number of Low Impact Development ("LID") fixtures installed  
24 during the prior year by the City and any LID fixtures permitted and installed by a private  
25 developer and the total acreage of stormwater treated by each fixture.  
26

27 10. From the effective date of this Consent Decree until the termination date set forth  
28 in paragraph 16 below, the City agrees to provide Soundkeeper, on a twice per year basis, with a  
29

1 detailed report on their progress towards accomplishing requirements in paragraph 8 this  
2 Decree, along with the following Permit documents transmitted by or to the Washington State  
3 Department of Ecology: annual reports and any attachments to the annual reports, SWMP Plans,  
4 G20 notifications, notices of violation or penalty issued to the City by Ecology related to the  
5 Permit, any Permit modifications issued to the City by Ecology, and any written  
6 communications to or from Ecology regarding the Permit.  
7

8 11. Within ten (10) days of entry of this Consent Decree, the City will pay a total of  
9 \$73,000.00 (Seventy-Three Thousand Dollars) to cover Soundkeeper's litigation fees,  
10 expenses, and costs (including reasonable attorney and expert witness fees) by check payable  
11 and mailed to Smith & Lowney, PLLC, 2317 E. John Street, Seattle, Washington 98112, attn:  
12 Richard Smith. This payment is full and complete satisfaction of any claims Soundkeeper may  
13 have under the CWA for fees and costs.  
14

15 12. A force majeure event is any event outside the reasonable control of the City that  
16 causes a delay in performing tasks required by this decree that cannot be cured by due diligence.  
17 Delay in performance of a task required by this decree caused by a force majeure event is not a  
18 failure to comply with the terms of this decree, provided that the City notifies Plaintiff of the  
19 event; the steps that the City will take to perform the task; the projected time that will be needed  
20 to complete the task; and the measures that have been taken or will be taken to prevent or  
21 minimize any impacts to stormwater quality resulting from delay in completing the task.  
22

23 The City will notify Soundkeeper of the occurrence of a force majeure event as soon as  
24 reasonably possible but, in any case, no later than fifteen (15) days after the occurrence of the  
25 event. In such event, the time for performance of the task will be extended for a reasonable  
26 period of time following the force majeure event.  
27  
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1  
2 By way of example and not limitation, force majeure events include

- 3 1. Acts of God, war, insurrection, or civil disturbance;  
4 2. Earthquakes, landslides, fire, floods;  
5 3. Actions or inactions of third parties over which defendant has no control;  
6 4. Restraint by court order or order of public authority;  
7 5. Strikes; and  
8 6. Litigation, arbitration, or mediation that causes delay.  
9

10 13. This Court retains jurisdiction over this matter. While this Consent Decree  
11 remains in force, this case may be reopened without filing fee so the parties may apply to the  
12 Court for any further order that may be necessary to enforce compliance with this decree or to  
13 resolve any dispute regarding the terms or conditions of this decree. In the event of a dispute  
14 regarding implementation of, or compliance with, this Consent Decree, the parties must first  
15 attempt to resolve the dispute by meeting to discuss the dispute and any suggested measures for  
16 resolving the dispute. Such a meeting should be held as soon as practical but must be held  
17 within thirty (30) days after notice of a request for such a meeting to the other party and its  
18 counsel of record. If no resolution is reached at that meeting or within thirty (30) days of the  
19 notice, whichever occurs first, either party may file a motion with this Court to resolve the  
20 dispute. The provisions of section 505(d) of the CWA, 33 U.S.C. § 1365(d), regarding awards of  
21 costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or  
22 substantially prevailing party, shall apply to any proceedings seeking to enforce the terms and  
23 conditions of this Consent Decree.  
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1           14.     The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent  
2 judgment can be entered in a CWA suit in which the United States is not a party prior to forty-  
3 five (45) days following the receipt of a copy of the proposed consent judgment by the U.S.  
4 Attorney General and the Administrator of the U.S. EPA. Therefore, upon the signing of this  
5 Consent Decree by the parties, Soundkeeper shall serve copies of it upon the Administrator of  
6 the U.S. EPA and the Attorney General.  
7

8           15.     This Consent Decree takes effect upon entry by the Court.

9           16.     This Consent Decree terminates three years from the date of entry of this Consent  
10 Decree.  
11

12           17.     This Consent Decree may not be used as evidence in any proceeding or as an  
13 admission or adjudication with respect to any allegations in the Complaint or any fact or  
14 conclusion of law with respect to any matter alleged in or arising out of the Complaint.  
15

16           18.     Both parties have participated in drafting this decree.

17           19.     This Consent Decree may be modified only upon the approval of the Court.

18           20.     If for any reason the Court should decline to approve this Consent Decree in the  
19 form presented, this Consent Decree is voidable at the discretion of Soundkeeper or the City.  
20 The parties agree to continue negotiations in good faith in an attempt to cure any objection  
21 raised by the Court to entry of this Consent Decree.  
22

23           21.     Notifications required by this Consent Decree must be in writing. The sending  
24 party may use any of the following methods of delivery: (1) personal delivery; (2) registered or  
25 certified mail, in each case return receipt requested and postage prepaid; (3) a nationally  
26 recognized overnight courier, with all fees prepaid; or (4) e-mail. For a notice or other  
27 communication regarding this Consent Decree to be valid, it must be delivered to the receiving  
28  
29



1 party at the addresses listed below or to any other address designated by the receiving party in a  
2 notice in accordance with this paragraph 21.

3  
4 if to Soundkeeper:

5 Katelyn Kinn  
6 Puget Soundkeeper Alliance  
7 130 Nickerson Street, Suite 107  
8 Seattle, WA 98109  
9 Email: [katelyn@pugetsoundkeeper.org](mailto:katelyn@pugetsoundkeeper.org)

10 and to:

11  
12 Alyssa Englebrecht  
13 Smith & Lowney PLLC  
14 2317 East John St.  
15 Seattle, WA 98112  
16 Email: [alyssa@smithandlowney.com](mailto:alyssa@smithandlowney.com)

17 if to City of Anacortes:

18 Darcy Swetnam  
19 City Attorney  
20 City of Anacortes  
21 904 6<sup>th</sup> Street  
22 P.O. Box 547  
23 Anacortes, WA 98221  
24 [darcy@cityofanacortes.org](mailto:darcy@cityofanacortes.org)

25 and to:

26 Fred Buckenmeyer  
27 Director Public Works  
28 City of Anacortes  
29 904 6<sup>th</sup> Street  
P.O. Box 547  
Anacortes, WA 98221  
[fredb@cityofanacortes.org](mailto:fredb@cityofanacortes.org)

1 A notice or other communication regarding this Consent Decree will be effective when  
2 received unless the notice or other communication is received after 5:00 p.m. on a business day,  
3 or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on  
4 the next business day. A notice or other communication will be deemed to have been received:  
5 (a) if it is delivered in person or sent by registered or certified mail or by nationally recognized  
6 overnight courier, upon receipt as indicated by the date on the signed receipt; or (b) if the  
7 receiving party rejects or otherwise refuses to accept it, or if it cannot be delivered because of a  
8 change in address for which no notice was given, then upon that rejection, refusal, or inability to  
9 deliver; or (c) for notice provided via e-mail, upon receipt of a response by the party providing  
10 notice or other communication regarding this Consent Decree.  
11

12 DATED this 26<sup>th</sup> day of February 2020.

13  
14 

15 RICARDO S. MARTINEZ  
16 CHIEF UNITED STATES DISTRICT JUDGE  
17

18 Presented by:

19 SMITH & LOWNEY, PLLC

20 By: s/ Richard Smith  
21 s/ Alyssa Englebrecht  
22 Richard Smith, WSBA #21788  
23 Alyssa Englebrecht, WSBA #46773  
24 Attorneys for Puget Soundkeeper Alliance

25 FOSTER GARVEY PC

26 By: s/ Lori A. Terry  
27 s/ Joanne Kalas  
28 Lori A. Terry, WSBA #22006  
29 Joanne Kalas, WSBA #46735  
Attorneys for City of Anacortes

CONSENT DECREE - 10  
Case No. 2:18-CV-01745-RSM

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2317 East John Street  
Seattle, Washington 98112  
(206) 860-2883